

Remarks

Entry of the amendments, reconsideration of the application, as amended, and allowance of all pending claims are respectfully requested. Upon entry of the amendments, claims 1-9, 11-12, 19-21 and 49-72 are pending.

With the above amendments to the independent claims, applicants are clarifying that the product usage information obtained from the plurality of products is analyzed together to provide a summary that includes data for the plurality of products. Support for this claimed feature is found throughout applicants' specification including paragraph 104, and therefore, no new matter is added. Support for the new claims can be found in the claims, as originally filed, as well as throughout applicants' specification; support for new dependent claims 71 and 72 can be found, for instance, in paragraphs 99, 102, 104 and 112-114, and therefore, no new matter is added.

In the Office Action dated December 23, 2008, claims 1-3, 7-9, 11-12 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lenny et al. (U.S. Patent Publication No. 2002/0060868) in view of Gray et al. (U.S. Patent No. 6,249,887); claims 4, 5 and 6 are rejected as being unpatentable over Lenny in view of Gray and further in view of Official Notice. Applicants respectfully, but most strenuously, traverse these rejections to any extent deemed applicable to the amended claims for the reasons herein.

In one aspect, applicants' invention is directed to automatically obtaining product usage information for a plurality of products and automatically forwarding data relating to the collected information to one or more interested entities. The product usage information is obtained by actual usage of the products in a real-time, non-test environment. By collecting this information and forwarding it to the interested entities, changes can be made to one or more of the products based on the information. In one embodiment, these changes are automatically made based on the automatically received information.

In one particular aspect of applicants' invention, applicants recite a method of facilitating provision of product usage information to interested entities (e.g., independent claim 1). The method includes, for instance, automatically obtaining, by a processor, product usage information generated by a plurality of products, used in real-time, non-test

environments, wherein the automatically obtained product usage information includes at least product usage information obtained regarding one product and product usage information obtained regarding another product, and wherein the plurality of products include autonomic logic and wherein the automatically obtaining is independent of product user input; analyzing by the processor the obtained product usage information generated from the plurality of products to obtain an analysis, wherein the analyzing analyzes at least the obtained product usage information of the one product together with the obtained product usage information of the another product to provide the analysis which represents at least both the one product and the another product; and automatically providing a summary of the analysis to at least one interested entity to determine whether a change is to be made to the plurality of products or future products, wherein the summary of the analysis includes data for at least the one product and for the another product.

Thus, in this aspect of applicants' claimed invention, information is obtained regarding a plurality of products. That is, information is collected regarding at least one product and another product. The information that is collected for the plurality of products is analyzed. The analysis includes analyzing the product usage information of at least the one product together with the product usage information of the another product. A summary of the analysis, which includes at least data for the one and another products, is automatically provided to an interested entity to determine whether a change is to be made. This is not described, taught or suggested in Lenny or Gray, either alone or in combination.

Lenny describes a critical event log for a disc drive. The data collected and analyzed in Lenny is data for a particular disc drive. There is no description, teaching or suggestion in Lenny of, for instance, analyzing the information generated from at least the one product together with the another product to obtain an analysis. Instead, in Lenny, information is obtained from individual disc drives and separate analyses of individual disc drives are performed. An analysis in Lenny is not of information generated from one product analyzed together with information from another product, as claimed by applicants, but of a single product. Since this is missing from Lenny, Lenny fails to describe, teach or suggest at least this aspect of applicants' claimed invention.

Further, it is explicitly admitted in the Final Office Action that Lenny fails to describe automatically providing data relating to the product usage information to at least one interested entity. Thus, Gray is relied upon. However, Gray does not overcome the deficiencies of Lenny.

Gray describes a technique for predicting failure of a disk drive, and like Lenny, Gray is focused on one particular product. There is no discussion in Gray of analyzing data from at least the one product together with the data from another product; and providing a summary of that analysis to an interested entity. While in Gray data is forwarded to an interested entity, it is data for one product. There is no description, teaching or suggestion in Gray of analyzing data together from a plurality of products, and providing a summary of that analysis of the plurality of products to the interested entity, as claimed by applicants. Since this is not taught or suggested in Gray, Gray does not overcome the deficiencies of Lenny.

Both Lenny and Gray fail to describe, teach or suggest at least applicants' claimed feature of analyzing data from a plurality of products, wherein the analyzing analyzes at least the obtained product usage information of the one product together with the obtained product usage information of the another product to provide the analysis which represents at least both the one product and the another product; and providing a summary of that analysis to an interested entity. Since both references fail to describe, teach or suggest at least this aspect of applicants' claimed invention, the combination also fails to describe, teach or suggest this feature. Thus, applicants respectfully request an indication of allowability for independent claim 1.

Additionally, independent claims 19, 49 and 60 are patentable for the same reasons as independent claim 1, as well as their own additional features. Moreover, the dependent claims are patentable for the same reasons as the independent claims, as well as for their own additional features. For example, dependent claim 71 further recites wherein the one product of the plurality of products is local to one product user and the another product of the plurality of products is global to the one product user, and wherein the analyzing analyzes the obtained product usage information of the one product local to the one product user together with the obtained product usage information of the another product global to the one product

user to provide the analysis which represents at least both the one product local to the one product user and the another product global to the one product user, and wherein the summary of the analysis includes data for at least the one product local to the one product user and for the another product global to the one product user. Applicants respectfully submit that both Lenny and Gray fail to describe, teach or suggest this aspect of applicants' claimed invention. There is no description, teaching or suggestion in Lenny or Gray of, for instance, analyzing product information obtained for one product local to one product user together with product usage information obtained for another product which is global to that one product user. Since this is not described, taught or suggested in Lenny or Gray, applicants respectfully submit that this aspect of applicants' claimed invention is patentable over the combination of Lenny and Gray.

As a further example, dependent claim 72 further recites wherein the analyzing includes analyzing the product usage information generated from the plurality of products in combination with at least one of date of manufacturing, product manufacturing subcomponents, product usage patterns, product usage errors or product history. Applicants respectfully submit that this feature is missing from both Lenny and Gray, and therefore, the combination of Lenny and Gray fails to describe, teach or suggest this aspect of applicants' claimed invention.

Moreover, dependent claim 4 recites using the summary of the analysis to effect one or more changes of one or more products of the plurality of products, wherein the using comprises using the summary to regroup a number of the products. Neither Lenny nor Gray describes the regrouping of products based on an analysis performed on a plurality of products including an analysis of at least one product together with another product.

Further, dependent claim 5 recites that the regrouping further includes using a grouping criterion, as well as the summary, to regroup the number of products. Again, this is not described, taught or suggested in Lenny or Gray, either alone or in combination. Yet further, dependent claim 6 specifically recites that the regrouping further comprises prioritizing the number of products and using the priority of the number of products, the regrouping criterion and the summary to regroup the number of products. Again, there is no

discussion in Lenny or Gray of regrouping of products or prioritizing products based on a grouping criterion and the summary, as claimed by applicants.

The failure of Lenny and Gray to teach these aspects of applicants' claimed invention, as recited in dependent claims 4-6, is explicitly admitted in the Final Office Action; however, the Examiner takes Official Notice that it is old and well known in the regroup and classification art to create a sub-group based on data previously provided, a grouping criterion, and to rank a priority factor to create a sub-group (referred to herein as creating a sub-group).

Assuming arguendo the taking of Official Notice is proper, which it is not applicants' contention, applicants respectfully submit that the combination, including the Official Notice, fails to teach or suggest one or more aspects of the claimed invention, and that the combination is impermissible hindsight reconstruction of applicants' invention.

Applicants respectfully submit: "To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the Examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references." Ex parte Clapp, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. & Inter. 1985) (MPEP §706.02(j)).

It is explicitly admitted in the Final Office Action that the references do not teach what is being claimed, and applicants respectfully submit that a convincing line of reasoning as to the use of Official Notice has not been provided. Applicants respectfully submit that it is insufficient to merely state that the creating of a sub-group is known. Even if the creating of a sub-group is known, it is not a teaching of the elements being specifically claimed by applicants. There is no teaching or suggestion in the references or with respect to the Official Notice of, for instance, using a summary of an analysis of product usage information generated by a plurality of products, in which at least product usage information automatically obtained for one product is analyzed together with product usage information automatically obtained for another product, to regroup a number of the products or prioritize the products, as claimed by applicants. Applicants respectfully submit that the combination does not teach at least this aspect of applicants' claimed invention, and the conclusions

presented in the Final Office Action are based on impermissible hindsight reconstruction of applicants' invention. Thus, applicants respectfully request withdrawal of the rejection of dependent claims 4-6.

Further, applicants respectfully submit that the taking of Official Notice is improper. In the Advisory Action, it is stated that applicants have not provided adequate information or arguments so that on its face it creates a reasonable doubt regarding the circumstances justifying the Official Notice. Applicants respectfully disagree and maintain their objection to taking Official Notice for the reasons below.

Applicants respectfully submit that the taking of Official Notice is improper for at least the reason that the facts taken under Official Notice do not describe the entire scope of applicants' claimed elements (see, e.g., 2009WL 726764 (Bd. Pat. App. & Interf.)). Applicants respectfully submit that the taking of Official Notice that it is old and well known to create a sub-group based on data previously provided does not describe the entire breadth of applicants' claimed elements, which include, for instance, using the summary of the analysis to regroup a number of products, in which the analyzing analyzes at least product usage information of one product together with product usage information of another product, and the summary includes data for at least the one product and the another product; to regroup based on that summary and a grouping criterion; and/or to regroup, in which the regrouping includes prioritizing the number of products, using the priority, grouping criterion and summary to regroup. Official Notice for the entire breadth of each claim, taken in entirety, is not provided, and for at least this reason, the taking of Official Notice is improper.

Applicants respectfully traverse the taking of Official Notice and respectfully submit that Official Notice, unsupported by documentary evidence, should only be taken where the facts asserted to be well known or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known (MPEP 2144.03; In re Ahlert, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970), which is not the case here. As stated in the MPEP, "It would not be appropriate for the Examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known." Further, "It is never appropriate to rely solely on "common knowledge" in the art without evidentiary support in

the record, as the principal evidence upon which a rejection was based." (MPEP 2144.03; Zurko, 258 F.3d at 1385, 59 USPQ2s at 1697). It is further stated that if such Official Notice is taken that the basis for such reasoning must be set forth explicitly. That is, the Examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his conclusion of common knowledge.

Applicants respectfully submit that the their claimed elements, taken in entirety, are not capable of instant and unquestionable demonstration as being well-known. Instead, applicants believe that the regrouping and prioritizing, as claimed, are part of their invention. Applicants respectfully submit that the use of a summary of analysis of a plurality of products, in which at least product usage information of one product is analyzed together with product usage information of another product, to regroup a number of products; to regroup based on that summary and a grouping criterion; and/or to regroup, in which the regrouping includes prioritizing the number of products, using the priority, grouping criterion and summary to regroup are incapable of instant and unquestionable demonstration of being well-known. Thus, applicants respectfully request that the Examiner produce authority for his statements.

Based on the foregoing, applicants respectfully submit that a *prima facie* case of obviousness has not been stated against the claims presented. Again, to the extent that the Examiner is relying on alleged knowledge of one of ordinary skill in the art, applicants request that the Examiner more specifically document the alleged knowledge of one of ordinary skill in the art if relevant to the combining of the references and the hindsight modification thereof. This request is made pursuant to 37 C.F.R. §1.104(d)(2).

For at least the above reasons, applicants respectfully request an indication of allowability for all pending claims.

Applicants respectfully request a telephonic interview with the Examiner at the time the Examiner considers this Response, if the Examiner continues to have concerns over the claimed invention. An Applicant Initiated Interview Request Form is included herewith.

Respectfully submitted,

Blanche E. Schiller

Blanche E. Schiller

Attorney for Applicants

Registration No.: 35,670

Dated: April 23, 2009

HESLIN ROTHENBERG FARLEY & MESITI P.C.

5 Columbia Circle

Albany, New York 12203-5160

Telephone: (518) 452-5600

Facsimile: (518) 452-5579